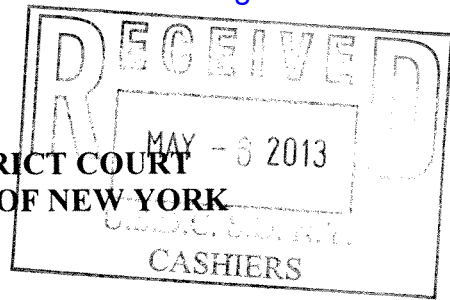


JUDGE COTE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



NATURAL RESOURCES DEFENSE )  
COUNCIL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES FOOD AND )  
DRUG ADMINISTRATION, )  
 )  
Defendant. )  
 )

13 CV 3019

Civil Action No. \_\_\_\_\_

ECF Case

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Natural Resources Defense Council (NRDC) asserts violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by defendant United States Food and Drug Administration (FDA), for failing to disclose responsive records concerning additives approved for use in food and food packaging.

2. This court has jurisdiction over this action and venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because plaintiff NRDC has its principal place of business in this judicial district.

3. NRDC is a national, not-for-profit environmental and public health membership organization with more than 350,000 members nationwide.

4. Defendant FDA is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks in this action.

5. NRDC submitted a FOIA request to FDA on March 8, 2013. NRDC's request seeks production of FDA's "Priority-based Assessment of Food Additive" database, or PAFA.

PAFA contains information on more than 5,000 chemical food additives approved for use in the United States.

6. NRDC also requested a waiver of the fees that would otherwise apply, on the grounds that disclosure of the requested information is in the public interest. FDA granted NRDC's fee waiver request on March 12, 2013.

7. Pursuant to the deadline established in 5 U.S.C. § 552(a)(6)(A)(i), FDA was required to respond to NRDC's FOIA request by April 5, 2013. To date, FDA has not provided NRDC with any response to its FOIA request.

8. On information and belief, FDA has produced the PAFA database to other entities outside the agency.

9. NRDC seeks a declaration that FDA has violated FOIA by refusing to disclose responsive records and an injunction ordering FDA to provide those records.

10. NRDC brings this action on its own behalf and on behalf of its members. NRDC and its members have been and continue to be injured by FDA's failure to provide responsive records. The requested relief will redress these injuries.

#### CLAIM FOR RELIEF

11. NRDC has a statutory right under FOIA to the records that it seeks, at no cost, and there is no legal basis for FDA's failure to disclose all responsive records.

#### REQUEST FOR RELIEF

WHEREFORE, the plaintiff respectfully requests an Order:

(1) Declaring that the defendant's failure to disclose the records requested by the plaintiff in a timely fashion is unlawful;

- (2) Directing the defendant to disclose the requested records to the plaintiff promptly and at no cost;
- (3) Awarding the plaintiff its costs and attorneys' fees; and
- (4) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 6, 2013

Respectfully submitted,

A handwritten signature in black ink, reading "Mitchell S. Bernard", is written over a horizontal line.

Mitchell S. Bernard (MB 5823)  
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